

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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Broadcast Localism ) MB Docket No. 04-233  
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To: The Commission

**COMMENTS OF GUENTER MARKSTEINER**

Guenter Marksteiner, owner and operator of WHDT-DT, Stuart, Florida ("WHDT"), by his attorneys, provides his comments on the Commission's *Report on Broadcast Localism and Notice of Proposed Rulemaking* in this docketed proceeding. The NPRM proposes to turn broadcast regulation back to the days of Studebakers, drive-ins, segregation and the Cold War on the theory that doing so will encourage broadcasters to produce more of their programming locally and be more responsive to the needs and interests of their communities.

Mr. Marksteiner respectfully speaks to these questions as a television broadcaster operating a station that is fiercely independent and uniquely local. In 2002 Mr. Marksteiner signed on WHDT in the West Palm Beach-Ft. Pierce, Florida DMA as the nation's first digital-only television station. It had a unique business plan: integrate a stylish "world-view" European magazine television format with relevant locally-produced shows shot in top quality high definition. Mr. Marksteiner built WHDT's main studio literally to exceed the state-of-the-art. Costing more than \$16 million, WHDT's broadcast center emerged as the most advanced high definition production facility in the United States. Because technical quality down the production and distribution chain depends critically on the quality of the source, Mr. Marksteiner

designed and commissioned the manufacture of unique “medium format” 35 mm high definition cameras and lenses for WHDT, allowing the station to introduce pristine, progressively-framed high definition television images to the world. Mr. Marksteiner maintains that WHDT continues to offer a quality level of over-the-air high definition that is unmatched by any other broadcast, cable or satellite source.<sup>1</sup> Photos of WHDT’s studios are attached as Exhibit A.

One of the factors driving Mr. Marksteiner to have WHDT produce its own high definition programming was the dearth of true high definition programming from other sources. The majority of the station’s programming is locally produced by WHDT’s full time production staff, and a significant portion of the station’s programming is “live”.<sup>2</sup> Unlike some broadcast stations that are optimized to collect, organize and re-distribute third party programming and to supplement it with a smaller amount of locally produced programming, WHDT is designed for local production first. The regulations proposed in the NPRM would have a devastating effect on WHDT and, ironically, may force the station to abandon its approach to providing high quality locally produced programming.

***The “Main Studio Rule”.*** The NPRM proposes to reinstate a version of the main studio rule that reflects broadcast regulation from the 1940s and 1950s. *See, e.g., Television Main Studio Location*, 43 FCC 888 (1952); *see also Rules Governing Standard and High-Frequency Broadcast Stations*, 11 Fed. Reg. 33 (1946). The NPRM proposes to oblige every

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<sup>1</sup> Mr. Marksteiner is in the process of mastering a disc that highlights WHDT’s unique, locally produced high definition programming and will supplement the record with a copy. A DVD version prepared for inclusion with these comments was rejected because even the highest quality encoding severely and unacceptably degraded the extremely high technical quality of WHDT’s locally produced programming.

<sup>2</sup> In October 2007 Comcast terminated cable carriage of WHDT. The financial impact of this extended interruption of service has forced WHDT to scale back local production, to suspend local production staff, and to restrict its operating schedule at times. Now that the FCC has adopted rules governing satellite carriage of digital-only stations, Mr. Marksteiner expects to resume WHDT’s normal local production schedule.

broadcast station to locate its main studio within the city limits of its community of license. Such a requirement would inflict immeasurable harm on television broadcasters and the viewers they serve. The FCC abandoned this highly restrictive version of the main studio rule in 1987, finding (among other things) that the mobility of Americans had increased and the means of communication between citizens and their broadcasters had improved so considerably that the post World War II era main studio rule should be relaxed. *See Main Studio and Program Origination Rules*, 2 FCC Rcd. 3215 (1987), *clarified*, 3 FCC Rcd. 5024 (1988). Eleven years later, and with virtually no controversy, the FCC relaxed the main studio rule again. *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd. 15691 (1998).

Ironically, if WHDT were required to relocate its main studio to a place within the city limits of Stuart, Florida the station would have to greatly reduce the amount of local programming it produces and airs. WHDT's main studio is used each day for broadcast of both live and taped local programming. *See Exhibit A.*<sup>3</sup> It is located three miles from Palm Beach International airport to facilitate the many guests who appear during local programming produced by the station. Without a convenient location for its live studio, WHDT would not be able to attract notable guests whose time availability is often very limited.

WHDT's main studio also offers a unique view from its 12th floor location over the city of Palm Beach. The view of a familiar skyline emphasizes that many broadcasts are in fact "live" and "local". This distinguishes WHDT's programming from non-local network

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<sup>3</sup> See fn. 2, *supra*.

and syndicated fare, increases viewer interest in watching the station's programming and induces many citizens to visit the station and to participate in its programming. WHDT maintains a limited operation in Stuart, Florida, but that location simply is not a viable substitute for WHDT's main studio. There is little comparable interest in visiting WHDT's Stuart facility, which is located in an industrial center. Because of local zoning restrictions in the station's city of license, WHDT's broadcast center would likely be restricted to just such an industrial environment.

Part of the \$16 million dollar investment made by WHDT in high definition production equipment is justified by leasing use of the station's unique facility to independent producers, many of whom require a "live" city backdrop for their productions. Some of these producers also rely on WHDT to test their productions in the marketplace. This revenue stream is essential to offset the cost of operating WHDT and to support the full time production staff.

The NPRM assumes that interaction between a broadcaster and the community only happens in the studio. The reality of the television business in the twenty-first century does not bear out this assumption. Nearly half of all local production by WHDT is shot "on location" within the station's service area rather than in a studio. The main studio serves to integrate these shoots into a viable daily slate of programming, which comprises both live and pre-taped segments. WHDT's location shoots take place throughout the station's broadcast area, including Stuart. By maintaining a main studio that is accessible to the entire DMA, WHDT has been able to integrate community leaders in its programming and provide coverage of local activities from across the service area. Viewers visit WHDT's main studio every week, and the station has never received a complaint that its studio is inaccessible.

***Unattended Operation.*** WHDT maintains a 24/7 broadcast schedule and is staffed twelve hours per day Monday through Friday and four hours per day on weekends. The station's evening programming is set up each day for automated playout, allowing the production staff to concentrate on production. This efficiency is essential if the station is to continue to offer its astonishing 70 hours per week of locally produced programming. The cost of adding staff to sit at the station during all broadcast hours would require a reduction of the budget for “on location” shooting in the community since other costs are fixed. Technology allows broadcasters to operate reliably while meeting all emergency broadcast and public safety obligations inherent to a broadcaster’s position in the community. Competition requires broadcasters – especially independent, community-oriented broadcasters – to take advantage of the same efficiency-enhancing technologies used by other media.

***Permanent Advisory Boards.*** WHDT stays abreast of the issues of interest to the community through the daily efforts of its programmers and producers. Requiring each broadcast station to maintain a permanent “advisory” board would be counterproductive because it would consume time and resources in a process that would elevate FCC-approved form over market-sensitive substance. WHDT’s programmers and producers live and work in the station’s service area and they spend their time out in the community creating community-centric programming. They do not spend their days locked in a dark studio in an anonymous industrial park. WHDT has no interest in competing with programming that is readily available on local access channels. WHDT is interested in creating professionally-produced entertaining, imaginative and informative programming that is unhampered by a “committee mentality”. Mr. Marksteiner believes that no matter how well-intentioned

advisory members may be, the result of their efforts at producing television would pale in comparison with the work of hands-on professionals whose careers depend on achieving actual day-to-day viewership. WHDT knows that it has found a niche within its community because it directly receives comments from its viewers. Most profusely thank the station for providing programming that is otherwise unavailable, and some claim that WHDT is "the only station that [they] watch".

WHDT is an independent producing television station competing in a major market replete with much larger national programmers. It succeeds because it is able to service local segments of its market that are not served by larger entities. WHDT controls all of its airtime. Unlike affiliated stations whose prime time hours are relegated to national programmers, WHDT offers programming during prime time hours that is unique, localized and responsive to the needs of its community. WHDT was the first station to offer locally-produced high definition programming in its market. In fact, it was the first television station to offer locally-produced high definition programming in the United States. Such pioneering is possible only in an atmosphere of intense commercial competition free of unnecessary and counterproductive governmental regulation.

The proposed rules would be devastating to WHDT, forcing the relocation of the station's unique \$16 million studio to an industrial park, a substantial reduction of its operating schedule, and a reduction in its slate of locally produced programming. For all of these reasons WHDT believes adoption of the proposed regulations would undermine the very goals to which they are addressed.

Respectfully submitted,

**GUENTER MARKSTEINER**

By: /s/ John K. Hane  
John K. Hane  
Christine Reilly

*His counsel*

Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037

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**EXHIBIT A**

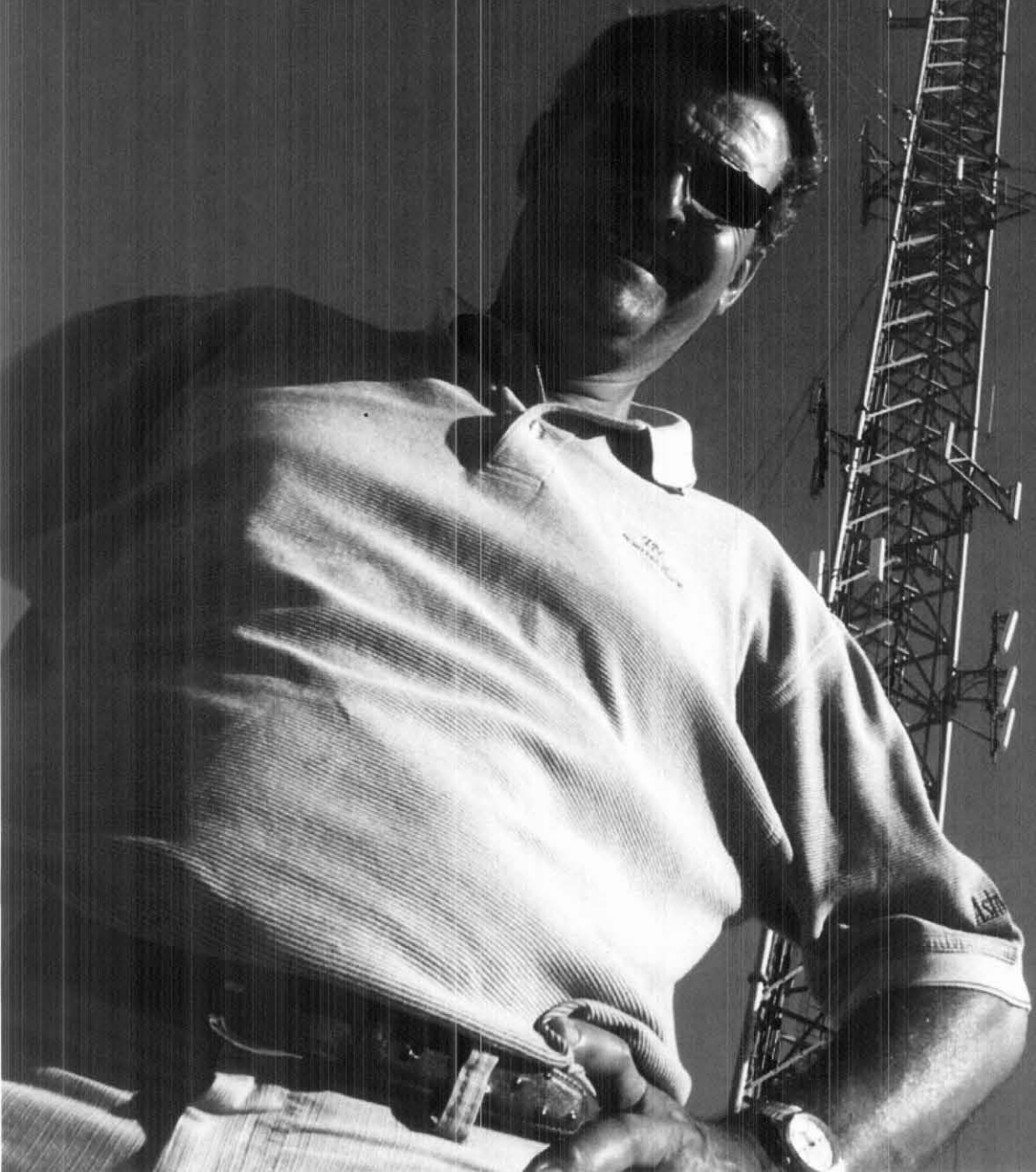




# WHDT West Palm Beach

circa 2003

WHD  
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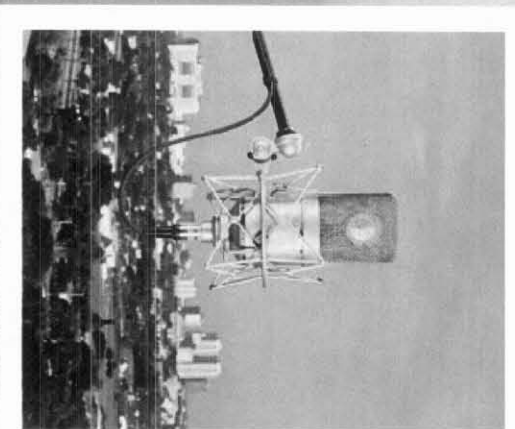




## SPECIAL REPORTAGE

Live coverage of breaking news requires efficient and accurate news gathering. Our international news feeds, supplemental local reports and live commentary inform viewers from the perspective of an independent broadcaster. Here's a look behind the scenes at our interdisciplinary team at work—as they built the first high definition digital television station in the U.S.





*and a live Palm Beach backdrop.*

